GAHC010138872026

2026:GAU-AS:15290

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./980/2026

SHRI WASHIMONG SADEM LONGKUMER
SON OF SUPONGPENZU SADEMKABA, RESIDENT OF HOUSE NO 68, NH-02, NEAR ADC OFFICE, TULIKONG WARD KOHIMA, NAGALAND 797001 PS-TULI, KOHIMA, NAGALAND, P.O- TULI, KOHIMA, NAGALAND

VERSUS

THE STATE OF ASSAM
REPRESENTED BY P.P., ASSAM

BEFORE

HON'BLE MRS. JUSTICE SHAMIMA JAHAN

Advocate for the petitioner(s): Mr. P. Upadhaya, Advocate

Advocate for the respondent(s): Ms. SH Bora, learned APP

Date on which judgment was reserved :**NA**

Date of pronouncement of judgment :**09.10.2026**

Whether the pronouncement is of the :

operative part of the judgment?:**NA**

Whether the full judgment has been :**Yes**

pronounced?

JUDGMENT AND ORDER (ORAL)

(J. Shamima Jahan)

Heard Mr. P. Upadhaya, learned Counsel for the petitioner and Ms. SH Bora, learned Additional Public Prosecutor for the State.

2. By this application filed under Section 528 of the BNSS, 2023, the petitioner has prayed for setting aside the order dated 26.03.2026 passed by the Court of Judicial Magistrate First Class, Kamrup(M) at Guwahati, by which the custody of an amount of Rs. 48,76,000/- was not allowed to the petitioner.

3. The case of the petitioner is that a huge amount of cash was seized by the police in connection with a Criminal Case i.e. Bharalamukh PS Case No. 353 of

2023 and the petitioner being the rightful claimant of the seized cash amount filed an application being Zimma Petition No. 8157/2026 before the Court of Judicial Magistrate First Class, Kamrup(M) at Guwahati, claiming the said amount but the learned Court rejected the prayer by order dated 26.03.2026. The Court while rejecting the prayer held that the petitioner had submitted some documents pertaining to his coal business and an inquiry conducted by the IT Department. However, it is held that the petitioner had not furnished any income related documents like income tax returns, bank statements or other financial documents to demonstrate his ownership over the cash amount. The Court had held that the documents submitted by the petitioner is not sufficient to establish the origin, source and ownership over the cash in question and as such, the said application was rejected.

4. The learned Counsel for the petitioner submits that the petitioner is the rightful claimant of the said amount and that he is a businessman, who is engaged in coal business. She further submits that the petitioner had collected huge amount of money in cash from different customers and that he handed over the money to one Dibakar Sen and Manoj Kumar Sharma as per instructions of his friend Sonu Sharma but he states that the said amount was looted from the rented house of Sonu Sharma. The learned Counsel also submits that the petitioner had furnished an affidavit before the income tax authority on 26.03.2026, wherein he stated that sum of Rs. 2,20,00,000/- was given by him to one Dev Karan Sen on 21.11.2023 at Guwahati and out of the said amount, Rs. 1,69,70,000/- was seized by the Income Tax Department and the balance amount of Rs. 50,30,000/- was missing and that out of the said amount, Rs. 48,76,000/- was recovered by the Assam Police. As such, the learned Counsel submits that the total amount of Rs. 2,18,46,000/- is liable to

be examined and considered in the hands of the petitioner for the purpose of assessment proceedings. As such, the learned Counsel submits that the said amount being the money of the petitioner should be given in custody.

5. On the other hand, Ms. SH Bora, learned Additional Public Prosecutor for the State had placed an instruction dated 18.08.2026 furnished by the Officer-In-Charge of Bharalumukh Police Station, wherein it is stated that the seized amount of Rs. 48,76,000/- was deposited at bank through treasury as per Court's order. It is further stated therein that petitioner could not produce any satisfactory documents in respect of the said seized money and as such, the Officer-In-Charge stated that the seized money may not be given in custody to the petitioner till the trial is concluded.

6. I have heard the Counsel and also gone through the records.

7. It is an admitted position of law that any articles seized in connection with any criminal offence should be given in custody to the owner of the said article or from whom it is seized, as soon as possible by the Magistrate. In the instant case, the currency notes were seized by the Police in connection with the aforesaid case and it has been held by the Hon'ble Supreme Court that currency notes should not be kept in police custody or elsewhere during the period of the trial and that the Magistrate should pass appropriate orders under Section 451 CrPC at the earliest. In ***Sunderbhai Ambalal Desai v. State of Gujarat***Reported in ***(2002) 10 SCC 283***, the Apex Court had held as under:

> "*Valuable Articles and Currency Notes - With regard to valuable articles, such as golden or sliver ornaments or articles studded with precious stones, it is submitted that it is of no use to keep such articles in police custody for years till the trial is over. In our view, this submission requires to be accepted. In such cases, Magistrate should pass appropriate orders as contemplated under Section 451 Cr.P.C. at the earliest.*"

It is also held in the said case that before ordering the article to be given in custody to the owner of the same, the concerned authority should take appropriate bond and guarantee as well as security for return of the said articles. It is also held therein that before handing over possession of any articles, appropriate photographs should be taken and detail panchnama should be prepared.

8. In the instant case, it is seen that the petitioner had filed an affidavit before the income tax authority showing his rightful claim over the seized cash and as such, this Court directs the Investigating Authority or the concerned authority to hand over the said seized cash amount to the petitioner after following the procedures laid down in the aforesaid Supreme Court case. The Investigating Agency or the concerned Court is also given the liberty to look into the documents submitted by the petitioner with regard to his rightful claim and may impose any other condition while releasing the cash to the petitioner.

9. With these directions, the petition is disposed of.

JUDGE

Comparing Assistant